

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) CASE NO. 4:06CR3145  
)  
Plaintiff, )  
)  
vs. ) Lincoln, Nebraska  
) November 7, 2007  
O'DARI ZANDAGHE WILEY, ) 12:00 p.m.  
)  
Defendant. )

TRANSCRIPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE RICHARD G. KOPF  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MS. SARA E. FULLERTON  
Assistant United States  
Attorney - Lincoln  
100 Centennial Mall North  
487 Federal Building  
Lincoln, Nebraska 68508

For the Defendant: MR. JOHN J. VELASQUEZ  
Marks, Clare Law Firm  
11605 Miracle Hills Drive  
Suite 300  
Omaha, Nebraska 68501

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 (Whereupon, at 12:00 p.m., the following proceedings were  
2 had in open court:)

3 THE COURT: Please be seated.

4 Good afternoon.

5 We're on the record now in U.S. versus O'Dari Wiley,  
6 4:06CR3145.

7 Counsel, please remain seated but now enter your  
8 appearance.

9 MS. FULLERTON: Your Honor, I'm Assistant United  
10 States Attorney Sara Fullerton representing the Government.

11 MR. VELASQUEZ: Good afternoon, Your Honor. John  
12 Velasquez appearing on behalf of the defendant O'Dari Wiley.

13 THE COURT: Mr. Velasquez, may I confirm with you  
14 that you have discussed the presentence report and the revised  
15 sentencing recommendation with your client?

16 MR. VELASQUEZ: Yes, Your Honor.

17 THE COURT: With regard to the plea agreement, I take  
18 it the parties want me to adopt it?

19 MS. FULLERTON: Yes, Your Honor.

20 MR. VELASQUEZ: Yes, sir.

21 THE COURT: Is there anything in the plea agreement  
22 which is inconsistent with the sentencing recommendation or the  
23 presentence report?

24 MS. FULLERTON: No, Your Honor.

25 MR. VELASQUEZ: No, sir.

1 THE COURT: I adopt the plea agreement.

2 That then brings us to the presentence report. The  
3 guidelines were amended effective November 1, 2007 to amend the  
4 base offense level applicable to this case. And the probation  
5 officer has submitted to the parties an amended guideline  
6 calculation and the sentencing recommendation. So I would  
7 think that I should note in the statement of reasons at  
8 Paragraph 1(b)(2) that the base offense level has been reduced  
9 by two levels to account for the amendment of the crack cocaine  
10 guidelines effective November 1, 2007.

11 Counsel, what do you think about that?

12 MS. FULLERTON: I agree, Your Honor.

13 MR. VELASQUEZ: I would be in agreement with that,  
14 Your Honor.

15 THE COURT: All right. I so rule.

16 Are there any other objec - are there any objections  
17 then or motions regarding the presentence report other than to  
18 apply the amended crack guidelines?

19 MS. FULLERTON: No, Your Honor.

20 MR. VELASQUEZ: No, sir.

21 THE COURT: All right.

22 MR. VELASQUEZ: Your Honor, no objections. And when  
23 we get to the point of calculating how much time my client has  
24 spent in jail, he tells me that it's a matter of ten days as to  
25 when he was arrested so I'll discuss that at that point.

1 THE COURT: Yes, sir.

2 Let me go over with you, then, counsel, the amended  
3 advisory guideline calculations. We have a total offense level  
4 of 33, a criminal history category of 2, a custodial guideline  
5 range of 151 to 188 months in prison, a supervised release  
6 range of five years. Probation is not authorized. The fine  
7 range is \$17,500 to 4 million dollars. There is no monetary  
8 restitution required, and a \$100 special assessment must be  
9 paid.

10 Counsel, have I accurately stated the correct  
11 advisory guideline calculations?

12 MS. FULLERTON: Yes, Your Honor.

13 MR. VELASQUEZ: Yes, sir.

14 THE COURT: Are the parties prepared to proceed to  
15 sentencing at this time?

16 MS. FULLERTON: Yes, Your Honor.

17 MR. VELASQUEZ: Yes, Your Honor.

18 THE COURT: Now, there is pending a sealed petition  
19 for action on conditions of pretrial release that alleges  
20 essentially that the defendant was arrested on murder charges  
21 in State Court. I presume that this petition for action on  
22 conditions of pretrial release should be dismissed as moot. Do  
23 you agree?

24 MS. FULLERTON: Yes, Your Honor.

25 MR. VELASQUEZ: Yes, sir.

1 THE COURT: All right. I will do that.

2 I will want the Government to address whether or not  
3 the allegations in the State action should be considered by me  
4 at the time of sentencing and, if so, how.

5 We'll proceed to allocution now, and I'll hear from  
6 the Government.

7 MS. FULLERTON: Your Honor, I don't have any comments  
8 specific to this case. With respect to the allegations that I  
9 understand that have been made against the defendant with  
10 respect to the State case, if it's the Court's question as to  
11 whether I believe it has anything to do with this case, I don't  
12 have any information that leads me --

13 THE COURT: That --

14 MS. FULLERTON: -- to bel --

15 THE COURT: -- that is my question.

16 MS. FULLERTON: Yes. I don't have any information  
17 that leads me to believe that that particular matter is  
18 connected to this case.

19 THE COURT: All right. Then I shan't give that any  
20 particular significance. Thank you.

21 Counsel?

22 MR. VELASQUEZ: Thank you, Your Honor. With regard  
23 to allocution, I would ask that you make a recommendation to  
24 the Bureau of Prisons, the \$500 drug treatment program, that he  
25 be placed preferably in Memphis - in the federal penitentiary

1 in Memphis, Tennessee or as close to Jonestown, Mississippi as  
2 possible. Mr. Wiley's from Jonestown, Mississippi and his  
3 family - his parents and family live there, so he would like to  
4 be placed as close to Jonestown, Mississippi as possible. And  
5 I believe that the closest federal facility is in Memphis,  
6 Tennessee. So I would ask for that recommendation.

7 THE COURT: I will do so.

8 MR. VELASQUEZ: Would ask for credit for time served.  
9 There's some question with regard to that. The records  
10 indicate that he was arrested on this matter on September 30,  
11 2006. My client tells me that he was actually arrested on  
12 September 20, 2006, ten days earlier. I don't have any  
13 information to substantiate that, but, again, that's what my  
14 client tells me. Although he was released on October 5 to CH,  
15 he was still in custody. He was not able to travel anywhere,  
16 wasn't able to do anything. And so I would ask that credit be  
17 given for the time that he was supposedly released, October 5  
18 through his actual physical release of February 6 of 2007.  
19 Again, he was at CH in Council Bluffs, I believe, during that  
20 time with 14 - approximately 14 days of that he was serving a  
21 State sentence. Then he was arrested, I believe, on May 17,  
22 2007 in Mississippi while on pretrial release on the pending  
23 State charge for the drive-by shooting. And so I would ask  
24 that he be given credit for that as well from the point of  
25 incarceration, May 17, 2007.

1 I would also ask if the Court would make a  
2 recommendation or would rule that his federal sentence be  
3 allowed to be ran concurrently with any State sentence that he  
4 would receive with regard to that pending State charge.

5 I would also ask that he be sentenced to the minimum  
6 under the sentencing guidelines, 151 months. He has  
7 cooperated. I don't believe he has information - it's my  
8 understanding that he probably will not get a reduction for  
9 substantial assistance, but he has cooperated at the federal  
10 level as well as the State level. He's cooperating on this  
11 homicide charge, this drive-by shooting. He was allegedly a  
12 driver and so he's cooperating with the police. So I would ask  
13 the Court to take that into consideration.

14 THE COURT: All right. It's unlikely that I would  
15 run the sentence concurrently because I doubt that that would  
16 impose proper incremental punishment. Tell me why I'm wrong.

17 MR. VELASQUEZ: Judge, I believe that it's related -  
18 I mean, this drug activity that he pled to was going on at the  
19 same time as this alleged drive-by shooting. I believe they're  
20 related in that --

21 THE COURT: Well, let me just cut you off and say if  
22 they're related, then arguably I ought to jack the sentence up  
23 and then arguably I ought to give him a concurrent sentence  
24 assuming he gets convicted of the underlying murder charges. I  
25 suspect neither one of those alternatives is particularly

1 palatable --

2 MR. VELASQUEZ: Correct.

3 THE COURT: -- to him, so - but go ahead and make  
4 whatever remarks you care to make.

5 MR. VELASQUEZ: Judge, he's cooperating at the State  
6 level with regard to that. I think that - all I can say with  
7 regard to that is that he's trying to be as helpful as he can  
8 with the police and he --

9 THE COURT: Sure, I don't doubt that.

10 MR. VELASQUEZ: -- so....

11 THE COURT: Thank you, sir.

12 Miss Fullerton, with respect to the question of  
13 credit for time served, do you have any information you'd like  
14 to give me?

15 MS. FULLERTON: Well, the only thing that I would  
16 say, Judge, in terms of the September to October 2006 period,  
17 is I look at the court record, and it shows the warrant being  
18 received by the marshal's office on September 22 of 2006. The  
19 Indictment was actually filed on September 20. The marshals  
20 received it on September 22 of 2006. This is Filing Number 9  
21 which is the warrant. And then that warrant also shows that it  
22 was served - or the arrest was made on October 3 of 2006.

23 THE COURT: October 3?

24 MS. FULLERTON: Yeah, that's what it shows on the  
25 warrant return. So it seems to me that that's probably the



1 appropriate date to show that he came in - he was in federal  
2 custody as of the date that that warrant was served upon him.  
3 Because if he was arrested on September 20 of 2006 by the  
4 Lincoln Police Department, that would have been prior to the  
5 warrant even being issued in this particular case.

6 THE COURT: But if it was on - if it had something to  
7 do with this underlying Indictment --

8 MS. FULLERTON: I don't know what that had - I don't  
9 know what he was arrested for on - frankly, Your Honor, I don't  
10 know what it was he was arrested for on September 20 of 2006.  
11 I do know that when we had to bring him over for initial  
12 appearance, he was in State custody on something which required  
13 us to get a writ to have him brought over here for his initial  
14 appearance. But what he was in custody for at that time, I  
15 don't know, and I can't tell from looking at the presentence  
16 report.

17 THE COURT: Well, the Government does agree that he  
18 should be - at least receive credit from 9-30-2007 at least if  
19 we use that as the date from the presentence report.

20 MR. VELASQUEZ: Your Honor, excuse me. 9-30-06.

21 THE COURT: 9-30-2006.

22 MS. FULLERTON: Okay. Well, the - according to what  
23 the LPD printout is, it does show 9-30-2006. So, yes, from  
24 that date until he was released on conditions - yes, he should  
25 get credit for that.

1 THE COURT: Which was 10-5 --

2 MS. FULLERTON: Yes.

3 THE COURT: -- of --

4 MS. FULLERTON: 2006.

5 THE COURT: -- '06. And then he was picked up again  
6 for a violation of pretrial release when?

7 MS. FULLERTON: When did he get picked up? He's got  
8 two different dates that aren't making sense to me. Here.  
9 See, we have June 7 and July 7. Which was it?

10 MS. VELASQUEZ: May 17 is when --

11 VOICE: That should be May 17.

12 MS. FULLERTON: Oh, okay. I'm told May 17 of 2007.

13 THE COURT: May 17, 2007 to the present?

14 MS. FULLERTON: That's when he was arrested in  
15 Mississippi?

16 VOICE: Yes.

17 MS. FULLERTON: Okay. Until the present, yes.

18 THE COURT: Thank you.

19 Mr. Velasquez, do you have anything you want to add?

20 MR. VELASQUEZ: No, Your Honor.

21 THE COURT: Thank you.

22 Mr. Wiley, you have the right to speak before I  
23 sentence you. You're not obligated to say anything, but you  
24 may speak now, sir, if you like. Do you want to say anything?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Go ahead.

2 THE DEFENDANT: First, I would like to apologize to  
3 the Court for my own behavior. I would also like to apologize  
4 to my family for letting them down. That's all. Thank you,  
5 Your Honor.

6 THE COURT: You're welcome.

7 To reflect the seriousness of the offense, to promote  
8 respect for the law, to provide for just punishment, and to  
9 afford deterrence, recognizing that the guidelines are  
10 advisory, considering all of the statutory goals of sentencing,  
11 I sentence you to 151 months in prison.

12 I recommend to the Bureau of Prisons that you be  
13 placed in a facility in Memphis, Tennessee, and I recommend in  
14 the strongest possible terms that you are enrolled in the  
15 intensive drug treatment program of the Bureau of Prisons.

16 I further recommend to the Bureau of Prisons that you  
17 receive credit for time served and official detention in this  
18 case from September 30, 2006 through October 5, 2006 and then  
19 again from May 17, 2007 until today's date.

20 When you're released from prison, you will serve five  
21 years of supervised release. The terms and conditions of  
22 supervised release will be the standard conditions together  
23 with the special conditions set forth in your written  
24 sentencing recommendation, a copy of which was provided to your  
25 counsel on November 1, 2007.

1 I do not impose a fine because you could not pay one  
2 and are not expected to be able to pay one. And you will pay  
3 the mandatory \$100 special assessment.

4 Counsel, that is my judgment, my sentence, and my  
5 Bureau of Prisons recommendations. Are there any questions?

6 MS. FULLERTON: No, Your Honor.

7 MR. VELASQUEZ: No, sir.

8 THE COURT: Do the parties wish any further  
9 elaboration of my statement of reasons?

10 MS. FULLERTON: No, Your Honor.

11 MR. VELASQUEZ: No, Your Honor.

12 THE COURT: Mr. Wiley, it is my obligation to inform  
13 you of your right to appeal. You have a right to have a higher  
14 court review what I've done. That's called an appeal. If you  
15 want to take that appeal, you have to file something in the  
16 court file called a notice of appeal. It's not hard to do.  
17 You write down "I want to appeal" and file it in the court  
18 file. Or you can tell your lawyer to file that for you, and if  
19 you tell him to do so, he's got to do that for you. Or you can  
20 tell the lady who sits in front of me, my courtroom deputy, to  
21 file the paper for you. And if you do, she has to do that for  
22 you as well.

23 If the paper is filed within ten days, a higher court  
24 will review what I've done. They'll give you a free lawyer if  
25 you can't afford one. And they won't make you pay money to

1 appeal. But you've got to file the paperwork within ten days  
2 or you lose your right to appeal.

3 In a minute, I'll leave the bench and this lady will  
4 give you a piece of paper that basically tells you what I just  
5 told you. That's the time to tell her if you want her to file  
6 the notice of appeal for you.

7 Do you have any questions about your right to appeal,  
8 sir?

9 THE DEFENDANT: No, sir.

10 THE COURT: Is there anything further that we can  
11 take up at this time?

12 MS. FULLERTON: No, Your Honor.

13 MR. VELASQUEZ: No, sir.

14 THE COURT: We stand in recess.

15 (end of proceedings - 12:20 p.m.)

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TRANSCRIBER'S CERTIFICATE

I hereby certify that the previous pages reflect truly, accurately and completely the recording of this proceeding as transcribed by me to the best of my ability.

In testimony whereof, I have hereunto set my hand this  
12th day of July, 2009.

s/Karen Mason - Transcriptionist